

JOINT COMMITTEE WORKSHOP
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	Docket No.
2008 Rule Making of the)	09-AB 1103-01
Nonresidential Building Energy)	
Performance Rating System:)	
California Public Resource Code,)	
Section 25402.10.)	
_____)	

EFFICIENCY COMMITTEE WORKSHOP
TO DISCUSS DRAFT REGULATIONS TO IMPLEMENT AB1103:
NONRESIDENTIAL BUILDING ENERGY PERFORMANCE
RATING SYSTEM

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

AUGUST 13, 2009

9:00 A.M.

Reported by:
Barbara Little
Contract No.

CALIFORNIA REPORTING, LLC
52 LONGWOOD DRIVE
SAN RAFAEL, CA 94901
415-457-4417

COMMISSIONERS PRESENT

Julia Levine

ADVISORS and STAFF PRESENT

Debbie Eden, Advisor to Commissioner Rosenfeld

Robin Mayer

Martha Brook

Amy Barr

ALSO PRESENT

Joe Derhake, Partner Engineering

Matthew Hargrove, California Business Properties Assoc.

John Cullum, Semptra Energy

Erik Emblem, 3E International

Peter W. Turnbull, PG&E

Bradford L. Packer, Department of Water and Power

Elizabeth Gavric, California Association of Realtors

Matthew Evans, Southern California Edison

Robert Levine, Southern California Edison

Patrick L. Splitt, App-Tech, Inc.

Shawn Thompson, City of Irvine

Bill Roberts

Nancy Cleveland

Ryan Fulcher, ASHRE

Rich Bluth, Irvine Company

I n d e x

	Page
Public Comments	4
Adjournment	20
Certificate of Reporter	21

PARTIAL PROCEEDINGS

1 MS. BROOK: -- going to be leased, or refinanced,
2 or sold, and it's relatively new, it has less than 12 months
3 of building data?

4 MS. BROMMET: Oh, it doesn't have to be new.

5 MS. BROOK: Oh, are you saying --

6 MS. BROMMET: I talked about a new building but,
7 for example, an existing building that decides to do
8 efficiency upgrades which, of course, is the point --

9 MS. BROOK: Right.

10 MS. BROMMET: -- to help pull the market towards
11 efficiency upgrades.

12 MS. BROOK: Right.

13 MS. BROMMET: So if those upgrades happen within
14 the 11-month timeframe of the utility bills, so that they're
15 not fully captured by the historical utility bill what's the
16 idea for how that would be handled and included in the
17 picture.

18 MS. BROOK: So that's an excellent point. And one
19 of the things we've thought about that wasn't really
20 communicated today was there could be some part on the form.
21 And in fact, ASHRA has a good example of this in their
22 disclosure certificate, where you have a place of disclosing
23 recent retrofit activity. So that could -- I think that's
24 an excellent point and thank you for bringing it up, and we

1 should consider having someplace on our disclosure that
2 allows that information to be provided.

3 Because, I mean, I would hope that anyone in the
4 financial transaction, decision making process, would want
5 to know that information.

6 But we haven't really figured out how we would
7 actually modify the rating to account for a recent retrofit,
8 we haven't done that, yet.

9 MS. MAYER: And the statute is pretty clear that
10 it's the previous 12 months worth of data, but there's
11 nothing to stop an owner from voluntarily benchmarking, and
12 presumably updating, and giving out that information in
13 terms of the rating.

14 MS. BROMMET: Okay, thanks.

15 COMMISSIONER LEVINE: Other comments or questions
16 on the phone or in the room?

17 MR. BLUTH: This is Rich Bluth, with the Irvine
18 Company, and I wanted to go back to the discussion on the
19 NDA.

20 I guess part one is I would -- in the overview it
21 was touched upon, but I'd like to understand a little bit
22 more about how the NDA process is envisioned.

23 And then I guess my second part of this is so. Cal
24 Edison's been pretty clear that that's not working for them.
25 And as a property owner, who has property in all three IOU

1 territories, I find it a concern that there's not alignment
2 with utilities on how they're even going to respond to this
3 process.

4 And I think that's a real key concern on my part.

5 COMMISSIONER LEVINE: There isn't anyone here from
6 the Public Utilities Commission; is there? I guess not. I
7 don't know if they have -- have they been involved in this
8 discussion?

9 MS. BROOK: There has been some -- some
10 participation from the Public Utility Commission on our
11 working group, mostly passive as far as just paying
12 attention to what we're doing, not actively making, you
13 know, legal decisions or opinions.

14 MS. MAYER: AB 531 abandoned these -- its own
15 solution because of these conflicts. So it's in our wrap to
16 deal with it.

17 And a regulation, obviously, has to apply
18 statewide, and that's why we're seeking to craft a solution
19 that will make as many people happy as possible, and
20 certainly not going to make everybody happy.

21 Peter, do you want to --

22 COMMISSIONER LEVINE: The utilities in the room are
23 caucusing.

24 MS. MAYER: Yeah, I had --

25 MR. TURNBILL: This is Peter Turnbull, from PG&E,

1 we had some informal off the -- not off the record, but
2 informal discussions with the CPUC on this issue and on, you
3 know, a if this, if this, if this basis they were open to
4 this concept of the nondisclosure.

5 So we did -- we've gone through and drafted some
6 documents, and so on and so forth. So that's -- our view is
7 that was a good way to proceed and one way or another
8 something of this nature would be operationally necessary.

9 So that's what we've done. We had some preliminary
10 discussions. We've encouraged the CEC and the CPUC to get
11 together on this issue and, you know, discuss what -- what
12 the framework might be. So that will be --

13 COMMISSIONER LEVINE: So then I'd just ask a
14 question of Robin, and Martha, and Amy, given that a number
15 of people have commented on, expressed concerns, have
16 questions about the nondisclosure agreement and it doesn't
17 seem like the three IOUs are in exactly the same place on
18 it; how can we try to bring closure to this issue in a way
19 that meets the concerns, is appropriate the three IOUs, and
20 the builders, and owners? I'm not sure how we do that in
21 this context; what do you recommend?

22 MS. MAYER: Well, I'd like to keep working with
23 them and see if we can arrive at a solution. One of the
24 written comments that we received before the workshop
25 suggested that there actually is a way to anonymously

1 control the data, and that was the first I've heard of it.

2 And it potentially would be a technical fix.

3 You know, personally, I don't want to go forward
4 without something.

5 COMMISSIONER LEVINE: Uh-hum.

6 MS. MAYER: I just don't think statutory
7 construction alone is enough and I don't think getting
8 third-party consent is very practical. So we need to -- you
9 know, that's all I can say is we need to keep working with
10 IOUs to come up with a practical solution.

11 COMMISSIONER LEVINE: I hate to suggest a roomful
12 of lawyers, as a lawyer myself, but I think this is
13 something it sounds like there need to be some very quick,
14 offline discussion with the key players, not just the
15 utilities, but the owners and buildings, Association of
16 Realtors, and others who are all impacted by it and try to
17 figure out what the right balance of interests of practical
18 implementation are here, because this seems to be coming up
19 with a lot of speakers.

20 And I don't know how to do that quickly, but I
21 really encourage all of you to sit down together quickly.

22 MS. MAYER: Yes. And I will say the NDAs have been
23 really the only solution that I've heard.

24 COMMISSIONER LEVINE: Yeah, and be solution
25 oriented, all of you.

1 So please?

2 MR. CULLUM: Again, this is John Cullum from Semptra
3 Energy.

4 We have, the IOU staff have had offline discussions
5 amongst ourselves about nondisclosure, we've had numerous
6 meetings trying to come up with a solution for nondisclosure
7 or a solution to solving confidentiality.

8 To Martha's point, though, I know Semptra is very
9 concerned about masking of data, functionality within our
10 systems is very costly and we have not addressed any costs
11 to cover any changes within our systems.

12 All IOUs have very different building systems and
13 ways of getting their information to the EPA, so to mandate
14 a solution by masking data, or hiding data, or -- we'd have
15 to have a lot of discussions around what our systems are
16 capable of doing, because each IOU is very different in that
17 regard. So that's a concern of ours.

18 But we are working towards working through a
19 solution to have all IOUs on the same page, hopefully, we'll
20 get there.

21 COMMISSIONER LEVINE: And that's a page that meets
22 the needs of the industry, the building owners, and tenants,
23 and their concerns about confidentiality? That's a
24 question.

25 MR. CULLUM: That's -- I'm sorry. That's the hope

1 is that we're trying to be -- obviously, seamlessness is
2 part of the goal for energy efficiency, that across the
3 State all the IOUs have the same programs. And we strive
4 towards that at least, hopefully, we'll achieve that goal in
5 this process.

6 COMMISSIONER LEVINE: Okay, thank you.

7 MS. MAYER: And I don't think aggregate of data is
8 the only solution, I wish it was. There's just a lot of
9 small buildings, with few tenants, and there just may not be
10 enough. But it's certainly a good approach.

11 COMMISSIONER LEVINE: Okay. Mr. Hargrove, you've
12 been very patient.

13 MR. HARGROVE: I'm specifically on this issue. And
14 again, I want to make sure that the room knows we're
15 supportive of this benchmarking law. I mean, we worked on
16 this legislation, we're supportive of this.

17 So we're not here to throw bombs, we're here
18 because we support this. We think it's the only way we can
19 get to some of our AB 32 market-based solutions is through a
20 statewide benchmarking law.

21 But there are issues in implementing this,
22 specifically on the NDA. And I hate to point back to the
23 bill, but subsection B of the bill does say that it's the
24 responsibility of the utilities to provide the information
25 on energy to the building owners, who need to -- who need to

1 benchmark these.

2 And this has been a point of issue with this all
3 along is how do you get these third-party folks or a master
4 meter to do this?

5 And there's been some discussion about having
6 building owners write that into our leases as we move
7 forward. I mean, the first issue with that is that it would
8 take years to implement, putting them into the leases,
9 because you have some long-term leases, and so we would have
10 concern for that reason.

11 But we would also have concern because we're
12 basically a third party to that energy information, it's
13 between the business, who's master metered, and the local
14 utility.

15 So something that we've suggested is look at when
16 you sign up for service, or as the service contracts roll
17 over to start putting it in that way.

18 And I know that that's something that some of the
19 utilities have considered and there's some difficulties with
20 that, but we think that might be the most efficacious way to
21 get companies to sign onto this is, in order to get your
22 service you need to say, we understand that under 1103 this
23 information is going to be used for benchmarking purposes.

24 COMMISSIONER LEVINE: Thank you.

25 MR. HARGROVE: Okay.

1 COMMISSIONER LEVINE: More on this issue or I think
2 you're all way smarter, more knowledgeable than I, and can
3 resolve this, hopefully, offline.

4 Mr. Hargrove did you -- I think you wanted to make
5 other comments, as well, if you want to take this time.

6 Yes?

7 MS. GAVRIC: This is Elizabeth Gavric with the
8 California Association of Realtors. And I realize this
9 isn't the appropriate forum by which for us to debate the
10 intent and the scope of AB 1103 or even AB 531. But
11 primarily, AB 1103.

12 And I have it in front of me now and I know that
13 we're going to differ immensely on our interpretation of the
14 language.

15 So I would like to request that perhaps the Office
16 of Administrative Law, or you get some third party to do a
17 legal interpretation of the scope and intent of AB 1103.

18 And we're not looking to stop what we've agreed
19 upon in the Energy Star Benchmarking Program, and the
20 working group, and we're fine with that. But it's the part
21 that the California is going to develop its own benchmarking
22 program that gives us a little bit of concern and we just
23 want to see if that's actually authorized statutorily.

24 Thank you.

25 COMMISSIONER LEVINE: We will consider that request

1 and get back to you.

2 Are there other comments, besides the scope of AB
3 1103, at this point?

4 Mr. Hargrove, please? You have earned more time on
5 the podium.

6 MR. HARGROVE: Matthew Hargrove, California
7 Business Property Association, I'll be really quick with
8 this one.

9 One thing that -- and again, all these comments
10 that we've been talking, Robin, one thing we see, think that
11 needs to be addressed in the rates, itself, is some sort of
12 boiler plate that says that if for some reason the building
13 owner cannot get this information, whether it's an issue
14 with the utility or, you know, something, that it doesn't
15 hold up the real estate transaction.

16 There's nothing -- there's disclosures that are
17 required in this but -- and we want to provide the
18 information, but there are instances where something might
19 happen, where the information is unavailable. We've had
20 database crashes and things like that.

21 And actually, in the next document, the 80-pager
22 that implements these regulations, there is some language in
23 there that says if a good faith effort is put forward and
24 for some reason the information can't be received, then the
25 building owner shall be deemed in compliance with this, we

1 think that needs to be actually reflected in the regs.

2 We don't think that's something that will be used
3 often, but there are pickups, as we all know, with
4 technology, and want to make sure that that gets reflected
5 somehow. Thank you.

6 COMMISSIONER LEVINE: I'm just curious whether that
7 sort of provision provides to earthquake safety, fire
8 safety, other disclosures, and how narrowly or broadly those
9 exceptions would apply in other areas; are there other
10 examples you can point to?

11 MS. GAVRIC: Elizabeth Gavric, with the California
12 Association of Realtors.

13 When it comes to disclosing information, typically,
14 about earthquakes, floods, hazardous waste sites, or
15 anything else that you might want to include in your
16 disclosure, those are typically generated by maps and so
17 they go out to a third party that you hire, a natural hazard
18 disclosure.

19 You just type in an address, they compile it using
20 GIS systems, all this different data that's available, so it
21 doesn't require any actual information to come from a
22 tenant, or any -- the tenant doesn't actually have to give
23 any specific information because that's all map-based, so
24 they should be --

25 COMMISSIONER LEVINE: And one of the example you

1 gave was with the computer crash, that could happen even
2 with the map database?

3 MS. GAVRIC: Yes.

4 COMMISSIONER LEVINE: I'm just trying to figure
5 out, if this is something we're going to pursue, you know,
6 how narrowly or broadly you're suggesting we craft it. Good
7 faith is a very vague term, it's an important one and it's
8 certainly used in many places in the law and regulations,
9 but it would be great if we could be a little more specific
10 about the kind of situations you could foresee or justify
11 not disclosing this.

12 MR. HARGROVE: And we agree, and this is where we'd
13 hope that the Department of Real Estate, or Consumer Affairs
14 would be more involved in this process.

15 Again, this is more than just about energy, this is
16 also -- you know, they have a huge regulatory piece on this,
17 too, and up to this point have not been involved in this
18 process. But we do ask.

19 COMMISSIONER LEVINE: Can we ask your help in
20 getting them involved?

21 MS. BROOK: We've invited them, but so if you could
22 help, that would be great.

23 COMMISSIONER LEVINE: Yes, sir?

24 MR. EMBLEM: Good morning, I'm Erik Emblem, I work
25 for 3E International, and I'm a consultant working for

1 California SMACCNA, the Sheetmetal and Air Conditioning
2 Contractors National Association, and the California Local
3 Unions of the Sheetmetal Workers International Association.

4 And I just want to comment on one piece where there
5 seems to be some discussion on the Energy Star database, and
6 portfolio manager, and the concept of having our own
7 database in California.

8 Having been in Washington for ten years, and
9 running the National Energy Management Institute, and I
10 would consider the ten years I was there were probably the
11 dark years, or the darkest years for Energy Star. Lack of
12 funding, lack of support, and having knowledge of that
13 database, and the people that work there do a great job, but
14 the database, the information is dated and limited. And it
15 is the best thing that's out there.

16 But I think that for California building owners,
17 who have had buildings and been under the Title 24, building
18 and energy efficiency regulations for quite some time, it
19 may be more advantageous to be comparing your building to
20 California buildings, than to that database.

21 So I think the Energy Commission staff is correct
22 in at least putting this forward and moving with it, and I
23 think it's going to be better for all the building owners in
24 the State; just my two cents.

25 COMMISSIONER LEVINE: Thank you, sir.

1 Any other comments and questions, or Martha, or
2 Robin, or Amy, do any of you want to make any closing
3 clarifications or statements?

4 I'm sorry, Debbie has a comment. Would you please
5 introduce yourself?

6 MS. EDEN: Yeah, I'm Debbie Eden, Advisor to
7 Commissioner Rosenfeld.

8 And I have a question that the legislation does say
9 utility service companies and that, I assume, includes POU's?
10 And I haven't heard, if you could maybe just summarize their
11 part in this and how -- if they've been participating and if
12 they've expressed concerns about disclosure and other
13 things?

14 MS. BROOK: They've been invited, they were
15 explicitly invited to be part of our working group and we
16 haven't had their participation yet, today.

17 So we were hoping, actually, that the beginning of
18 a rule making would bring them and get them interested in
19 what we're trying to accomplish, because they do have
20 obligations under the law, but we haven't had their
21 participation, yet.

22 COMMISSIONER LEVINE: So maybe we should try
23 and --

24 MS. MAYER: Debbie, I don't know if you were here
25 when I was presented, but the public utilities have this

1 exception where they can turn over data to other government
2 agencies under the Government Code, so they don't have the
3 same problem.

4 MS. BROOK: But SMUD has been very active in our
5 working group and I apologize for not --

6 MS. MAYER: And very helpful.

7 MS. BROOK: And they have set up an automated
8 system, so they can do automated benchmarking through
9 Portfolio Manager, but we haven't had any other
10 participation from public-owned utilities.

11 So I just wanted to -- if there's -- I just wanted
12 to mention one thing, that this is not something that's been
13 supported by the working group, it's my opinion, so I just
14 wanted to lay it out here because I think it's important
15 when we think about the bigger picture of ratings, and
16 rating approaches in California.

17 And all of this problem that we're having with
18 nondisclosure agreements and data confidentiality, it's all
19 because we're trying to force this model of an operational
20 rating for a whole building, where there's tenant lease
21 spaces that are separately metered.

22 And if we took a different approach and used more
23 of an asset rating approach, like they do in the European
24 Union for this specific application, we wouldn't have to
25 have these problems.

1 So one -- one approach could be that if we can't
2 get all this stuff worked out that we say, for tenant lease
3 spaces where they're separately metered, we wait until we
4 have an asset rating system and then those buildings would
5 be implemented in a different way, their ratings would be
6 applied in a different way, so that's an option that we
7 have.

8 COMMISSIONER LEVINE: Thank you. I would just like
9 to thank you all. I think probably everyone, or nearly
10 everyone in the room has put a lot of time and effort into
11 this proposed rule making and into AB 1103, and AB 531 -- is
12 that the number? We have so many bills and, of course, they
13 go on all the time.

14 And that's like the acronyms; it becomes one big
15 soup of numbers and letters.

16 We really appreciate the comments, especially
17 specific suggestions about how to deal with specific
18 concerns that you have is extremely helpful. And I know
19 staff are really trying to make this workable.

20 We do feel that under current law, both AB32 and AB
21 1103, that we need to move forward, that energy efficiency
22 for buildings is a critical part of reducing our greenhouse
23 gas emissions in California and saving consumers money.

24 But we absolutely do not want to impact real estate
25 transactions. We don't believe that this process needs to,

1 but we do want to hear from you about how we can do this in
2 a way that makes it the most workable.

3 So thank you all. I really have heard a lot from
4 staff, and from Debbie, that it's been a very constructive
5 working collaborative.

6 And I know, having been a stakeholder in past CEC
7 processes, that's critical for us to achieve the right
8 results.

9 And so I think with that we're going to close the
10 hearing and look forward to seeing you all again soon, thank
11 you.

12 (Whereupon, at 10:55 a.m., the Committee
13 Workshop was concluded.)

14 --oOo--

15

16

17

18

19

20

21

22

23

24

25